

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES AT VICTORIA
Civil Side No. 249 of 2008

K L Chetty Plaintiffs

E Chetty

P Chetty

Versus

M Chetty Defendants

L Chetty

Frank Ally for the Plaintiffs

Anthony Derjacques for the defendants

Ruling

Egonda-Ntende CJ

1. Mr. Anthony Derjacques, learned counsel for the defendants, objected to the admission of a report from Mr. Yumbe, a witness who was testifying, on the ground that the witness was not authorised to practice as such in this jurisdiction. He relied on Section 16 of the Licences Act and submitted that though the profession of Land Economists is not referred to in Schedule 1 among those professions for which a licence is required, the list of professional services for which a licence was required included Auctioneers and Appraisers, Land Surveyors and Quantity Surveyors. He submitted that the witness should be treated as an appraiser. And the document intended to be adduced in evidence should be rejected.
2. Mr. Frank Ally, learned counsel for the plaintiffs, submitted that the objection had no merit. The witness was a competent witness who was

qualified in his area to give expert opinion on the subject at hand, and that is all that mattered. He submitted that there was no requirement to obtain a practising certificate for any profession before one could testify in court.

3. Section 16 of the Licences Act states,

‘(1) Notwithstanding anything in any other Act, no person shall--
(a) engage in or carry on any activity, profession, trade or business specified in Schedule 1;
(b)
(c)
except in accordance with a licence granted by the authority.
(2)
(3) The Minister may exempt, subject to such conditions, as he thinks fit, any person or premises from the operation of all or any provisions of the Act.’

4. Under schedule 1 of the Licences Act, No 35, professional services as specified in regulations made under the Act, are included in those professional activities that can only be carried on with a licence from the Authority.

5. Mr. Derjacques has referred to professional services as Auctioneers and Appraisers, Land Surveying and Quantity Surveying that are referred to in the Licences (Professional Services) Regulations made under the Act. I agree with Mr. Frank Ally that these professional services do not cover the profession of valuing property.

6. However there is regulation 2 (d) which states,

‘**services** as an estate agent which would include the valuing, buying and selling of property and leasing and managing and of property for customers.’

7. It appears to me that a professional service of ‘valuing’ property is included in those professional services for which a practitioner in that area must obtain a licence before he can practise such profession in this jurisdiction.

8. It is not in dispute that Mr. Yumbe is employed in the Public Service. He carried out the valuation of the property in question not in his capacity as a servant of government. He did so outside his duties with Government. I agree with Mr. Frank Ally that he was not carrying on a trade but he was definitely practising the professional service of valuing property. To do so he needed a licence.
9. If the witness is prohibited from carrying on a professional service in this country, this, in my view, would extend to testifying in court as an expert, in relation to such prohibited enterprise. To hold otherwise once the matter has come to the knowledge of the court is for the court to abet the unlawful act committed in this country.
10. I agree that Mr Yumbe may, ordinarily, have been a competent witness but if the professional practice he is engaged in is contrary to the law and this is brought to the attention of the court, the court cannot simply look the other way, and let the illegality continue. Obviously Mr. Yumbe was retained to make a valuation of the property in question with a view that he would testify in court. The testimony today is a continuation of his professional services in relation to the prohibited activity of valuing property without a license.
11. For that reason I would decline to accept this report from this witness unless it is shown that he is possessed of a licence or has the exemption from the Minister.

Signed, dated and delivered this 30th day of November 2010

FMS Egonda-Ntende

Chief Justice